



The State of New Hampshire
Department of Environmental Services



Michael P. Nolin
Commissioner

Mark Thompson
249 Route 3A
Hill, NH 03243

ADMINISTRATIVE ORDER
No. WMD 04-09

July 9, 2004

A. INTRODUCTION

This Administrative Order is issued by the Department of Environmental Services, Waste Management Division to Mark Thompson pursuant to RSA 149-M:15, I. This Administrative Order is effective upon issuance.

B. PARTIES

1. The Department of Environmental Services, Waste Management Division ("DES"), is a duly constituted administrative agency of the State of New Hampshire, having its principal office at 29 Hazen Drive, Concord, NH 03301.
2. Mark Thompson is an individual having a mailing address of 249 Route 3A, Hill, NH 03243.

C. STATEMENTS OF FACTS AND LAW

1. Pursuant to RSA 149-M, DES regulates the management and disposal of solid waste. Pursuant to RSA 149-M:7, the Commissioner of DES has adopted Env-Wm 100 – 300, 2100 *et seq.* ("Solid Waste Rules") to implement this program.
2. Mark Thompson is the owner of land at 249 Route 3A, Hill, NH, more particularly described in a deed recorded in the Merrimack County Registry of Deeds at Book 2410, Page 0841, and identified on Hill Tax Map R-10 as Lot 005-2A ("the Site").
3. On August 29, 2002, DES received a complaint alleging that Mark Thompson accepted roofing shingles and other debris from off-site. The complaint also alleged that Mr. Thompson burned the roofing shingles and debris.
4. On December 16, 2002 ("December Inspection"), DES personnel conducted an inspection of the Site. The purpose of the inspection was to determine Mr. Thompson's compliance status relative to RSA 149-M and the Solid Waste Rules.
5. RSA 149-M:4, XXII defines "solid waste" as "any matter consisting of putrescible material, refuse, residue from an air pollution control facility, and other discarded or abandoned material."
6. RSA 149-M:4, XXI defines "refuse" in part, as "any waste product ... which is composed wholly or partly of such materials as ... brick, plaster or other waste resulting from the

demolition, alteration, or construction of buildings or structures; or accumulated waste material, cans, containers, tires, junk, or other such substances which may become a nuisance.”

7. Env-Wm 102.42 defines “construction and demolition debris” in part, as “non-putrescible waste building materials and rubble which is solid waste resulting from the construction, remodeling, repair or demolition of structures or roads. The term includes but is not limited to, bricks, concrete and other masonry materials, wood, wall coverings, plaster, dry wall, plumbing, fixtures, non-asbestos insulation or roofing shingles, asphaltic pavement, glass, plastics that are not sealed in a manner that conceals other wastes and electrical wiring and components, incidental to any of the above and containing no hazardous liquid or metals. The term does not include asbestos waste, garbage, corrugated container board, electrical fixtures containing hazardous liquids such as fluorescent light ballasts or transformers, furniture, appliances, tires, drums and containers, and fuel tanks.”

8. During the December Inspection, DES personnel observed approximately 50-60 cubic yards of debris. DES personnel observed wood, partially burned wood, painted wood, metal, an old table saw, rigid foam insulation, fiberglass insulation, plywood, plastic, a metal kitchen sink, asphalt roof shingles, an exterior door, metal duct work, wiring, galvanized drip edge, metal eave vent strips, blue poly tarp, and auto parts.

9. The wood, partially burned wood, painted wood, metal, an old table saw, rigid foam insulation, fiberglass insulation, plywood, plastic, a metal kitchen sink, asphalt roof shingles, an exterior door, metal duct work, wiring, galvanized drip edge, metal eave vent strips, blue poly tarp, and auto parts observed by DES personnel at the Site are solid wastes as defined by RSA 149-M:4, XXII.

10. RSA 149-M:4, IX defines a “[solid waste] facility” as “a location, system, or physical structure for the collection, separation, storage, transfer, processing, treatment or disposal of solid waste.”

11. The Site constitutes a “solid waste facility” as defined by RSA 149-M:4, IX.

12. Env-Wm 102.116 defines “owner” as “a person who owns a facility or part of a [solid waste] facility.”

13. Mr. Thompson is the owner of a solid waste facility.

14. RSA 149-M:9, I states that “No person shall construct, operate or initiate closure of a public or private facility without first obtaining a permit from [DES].”

15. A review of DES files shows that Mr. Thompson has not applied for or received a permit to operate a solid waste facility at any New Hampshire location.

16. RSA 149-M:9, II states that “It shall be unlawful to transport solid waste to, or to dispose of solid waste at, any facility other than an approved facility.”

17. Solid waste has been transported to and disposed at the Site. This Site is not approved to accept solid waste.

18. Env-Wm 2702.02(e) specifies that facilities and practices shall not cause air pollution in violation of federal or state law, any air quality rules implemented by DES, the conditions of any air quality permit issued by DES, or the New Hampshire State Implementation Plan under the Clean Air Act.

19. Env-A 1001.05(d), adopted by the Commissioner of DES, states that the following types of burning shall be permissible without authorization from DES: on-site burning by the landowner of brush, leaves, or untreated wood from the construction or demolition of a building provided the material originates on-site.

20. Mark Thompson burned solid waste which did not meet the criteria set forth in Env-A 1001.03(c)(4) at the Site.

21. On April 20, 2004, DES personnel conducted a follow-up inspection of the Site. DES personnel observed little to no change at the Site. DES personnel observed an additional 15-20 cubic yard pile of solid waste consisting of fiberglass insulation, rigid foam insulation, plywood, wafer board, treated and untreated wood, galvanized metal, electrical wiring, plastic, electrical panel, a bicycle, and aluminum cans. A portion of the pile was covered with brush and appeared to be a burn pile.

D. DETERMINATION OF VIOLATIONS

1. Mark Thompson has violated RSA 149-M:9, I by operating an unpermitted solid waste facility.

2. Mark Thompson has violated RSA 149-M:9, II by transporting solid waste to and disposing solid waste at a permitted solid waste facility.

3. Mark Thompson has violated Env-Wm 2702.02(e) by burning solid waste other than as allowed by Env-A 1000.

ORDER

Based on the above findings, DES hereby orders Mark Thompson as follows:

1. **Immediately** cease operating an unpermitted solid waste facility.
2. **Immediately** cease disposing of solid waste at an unpermitted facility.
3. **Immediately** cease burning non-conforming solid waste other than as allowed by Env-A 1000.
4. **By August 31, 2004**, remove all solid waste at the Site to a facility or facilities permitted to accept such wastes.
5. **Within 10 days of the proper disposal of the solid waste**, forward copies of disposal receipts to DES.

6. Send correspondence, data, reports, and other submissions made in connection with this Administrative Order, **other than appeals**, to DES as follows:

Michael Galuszka
NHDES
80 Glen Road
Gorham, NH 03581
Telephone: (603) 466-5389
e-mail: mgaluszka@des.state.nh.us

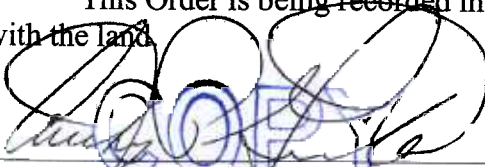
F. APPEAL

Any person aggrieved by this Order may appeal the Order to the Waste Management Council by filing an appeal that meets the requirements specified in Env-WMC 200 within 30 days of the date of this Order. Copies of the rule are available from the DES Public Information Center at (603) 271-2975 or at <http://www.des.state.nh.us/desadmin.htm>. Appealing the Order does not automatically relieve Mark Thompson of the obligation to comply with the Order.


G. OTHER PROVISIONS

Please note that RSA 149-M provides for administrative fines, civil penalties, and criminal penalties for the violations noted in this Order, as well as for failing to comply with the Order itself. Mark Thompson remains obligated to comply with all applicable requirements, in particular RSA 149-M. DES will continue to monitor Mark Thompson's compliance with applicable requirements and will take appropriate action if additional violations are discovered.

This Order is being recorded in the Merrimack County Registry of Deeds so as to run with the land.



Anthony P. Giunta, P.G., Director
Waste Management Division



Michael P. Nolin, Commissioner
Department of Environmental Services

Certified Mail/RRR: 7000 1670 0000 0584 3298

cc: DB/FILE
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Town Clerk, Hill, NH
Merrimack County Registry of Deeds

Enclosures: AO Fact Sheet CO-7